

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DIMITRI Z. STORM,

Plaintiff,

v.

OFFICE OF THE CALIFORNIA
GOVERNOR, GAVIN NEWSOM,
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA, SECRETARY
OFFICE OF CALIFORNIA, THE
PEOPLE OF THE STATE OF
CALIFORNIA,

Defendants.

Case No. 1:24-cv-00215-HBK

ORDER TO RANDOMLY ASSIGN TO
DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION WITHOUT PREJUDICE¹

14-DAY DEADLINE

Plaintiff Dimitri Z. Storm is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends that the District Court dismiss this action without prejudice for Plaintiff's failure to comply with a court order and prosecute this action.

BACKGROUND

Plaintiff initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983 on February 20, 2024. (Doc. No. 1, "Complaint"). On March 22, 2024, the Court struck Plaintiff's

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2023).

Complaint because it was illegible and directed Defendant to refile a legible Complaint within 30 days. (*See generally* Doc. No. 11). The Court enclosed a blank civil rights complaint form with its Order for Plaintiff’s use as appropriate. (*Id.* at 2, ¶3). The Court expressly warned that Plaintiff that his “failure to timely comply with this Order will result in the undersigned recommending the district court dismiss this case for Plaintiff’s failure to comply with a court order and prosecute this action.” (*Id.*, ¶ 4). As of the date of these Findings and Recommendations, Plaintiff has failed to submit a legible complaint for the Court to screen under 28 U.S.C. § 1915A, or request a further extension of time to comply, and the time to do so has expired. (*See* docket).²

APPLICABLE LAW AND ANALYSIS

A. Legal Standard

Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action when a litigant fails to prosecute an action or fails to comply with other Rules or with a court order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control their dockets” and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). In determining whether to dismiss an action, the

² The undersigned afforded eight days for mailing before issuing these Findings and Recommendation.

1 Court must consider the following factors: (1) the public's interest in expeditious resolution of
2 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants;
3 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
4 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.
5 1988).

6 **B. Analysis**

7 After considering each of the above-stated factors, the undersigned concludes dismissal
8 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of
9 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*
10 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

11 Turning to the second factor, this Court's need to efficiently manage its docket cannot be
12 overstated. This Court has "one of the heaviest caseloads in the nation," and due to the delay in
13 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operates
14 under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial
15 Emergency in the Eastern District of California. This Court's time is better spent on its other
16 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot
17 effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court
18 order. Thus, the Court finds that the second factor weighs in favor of dismissal.

19 Delays inevitably have the inherent risk that evidence will become stale or witnesses'
20 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
21 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice
22 to defendant—weighs in favor of dismissal since a presumption of injury arises from the
23 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.
24 1976). Because Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action,
25 the third factor weighs in favor of dismissal.

26 The fourth factor usually weighs against dismissal because public policy favors the
27 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).
28 However, "this factor lends little support to a party whose responsibility it is to move a case

1 toward disposition on the merits but whose conduct impedes progress in that direction,” which is
2 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,
3 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on
4 multiple failures by aspiring litigants to follow the rules and requirements of our courts.”
5 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court’s involuntary
6 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court
7 order and noting “the weight of the docket-managing factor depends upon the size and load of the
8 docket, and those in the best position to know what that is are our beleaguered trial judges.”).

9 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
11 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s March 22, 2024 Order
12 expressly warned Plaintiff that his failure to respond to the Court’s Order would result in a
13 recommendation of dismissal of this action. (Doc. No. 11 at 2, ¶ 4). Thus, Plaintiff had adequate
14 warning that dismissal could result from his noncompliance. And the instant dismissal is a
15 dismissal *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby
16 satisfying the fifth factor.

17 After considering the factors set forth *supra* and binding case law, the undersigned
18 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110.

19 Accordingly, it is hereby **ORDERED**:

20 The Clerk of Court randomly assign this case to a district judge for consideration of these
21 Findings and Recommendations.

22 It is further **RECOMMENDED**:

23 This action be DISMISSED *without prejudice* for Plaintiff’s failure to obey court orders
24 and failure to prosecute.

25 NOTICE TO PARTIES

26 These Findings and Recommendations will be submitted to the United States District
27 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
28 after being served with a copy of these Findings and Recommendations, a party may file written

1 objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned,
2 “Objections to Magistrate Judge’s Findings and Recommendations.” The assigned District Judge
3 will review these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s
4 failure to file objections within the specified time may result in the waiver of certain rights on
5 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

6
7 Dated: April 30, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE